IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.9.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.745 of 2007

Radha .. Petitioner

Vs.

1. The State of Tamilnadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai-9.

2. The District Magistrate and
   District Collector
   Salem District
   Salem. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

This Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Habeas Corpus to call for the entire records leading to the detention of the petitioner's husband namely Rajendiran S/o Manickam detained under article 14/82 vide detention order dated 25.4.2007 on the file of the 2nd Respondent herein made in the CMP NO. 4/B.L.A./C2/2007 quash the same and consequently direct the respondents herein to produce the body and person of the said detenue before this Hon'ble Court.

For Petitioner : Mrs.R.Subadra Devi

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against Rajendiran, Son of Manickam, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. The order of detention came to be passed by the second respondent on the basis of the ground case, complaint of which was given by one Rajendiran to the Inspector of Police, Prohibition Enforcement Wing, Attur stating that the detenu was selling arrack, and when the complainant consumed the same he felt blurring of his eyes besides giddiness and that he had vomitted several times. A case was registered in Crime No.301 of 2007 on the file of the Attur Prohibition and Excise Wing Police Station for the offences punishable under Sections 4(1)(i) and 4(1-A) of the Tamil Nadu Prohibition Act, the detenu was apprehended, arrack was recovered in the presence of witnesses. On chemical analysis, the Doctor opined that the arrack is mixed with 6.4 mg. of atrophine per 100 ml. Arrack and the same is harmful and injurious to human body. The order of detention is also supported with three adverse cases against the detenu for the offences of alike nature.

3. Challenging the said detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records leading to the detention of the detenu Rajendiran, son of Manickam detained under Tamil Nadu Act 14 of 1982, vide detention order dated 25.4.2007 on the file of the second respondent herein made in the C.M.P.No.4/B.L.A./C2/2007, to quash the same and to consequently direct the respondents herein to produce the body and person of the detenu and to set him at liberty.

4. Heard Mrs.R.Subadra Devi, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

5. The only contention advanced by the learned counsel for the petitioner is that there is considerable delay in considering the representation dated 16.5.2007 and the same has rendered the detention illegal.

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6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

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7. In the instant case, the impugned order of detention came to be passed on 25.4.2007. A representation was made to the detaining authority on 16.5.2007. The detaining authority received the same on 18.5.2007 and remarks were called for on 19.5.2007. The representation was received from the Government Central Prison by the Collectorate only on 29.5.2007. Even though 19.5.2007, 20.5.2007, 26.5.2007 and 27.5.2007 happen to be public holidays, still a delay of 6 days exists. This delay was highlighted by the learned counsel for the petitioner. There is no convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for six days (excluding two Saturdays and two Sundays), between 19.5.2007 and 298.5.2007. There is absolutely no explanation for this delay.

8. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

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The towering delay of six days which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 25.4.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

sasi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The District Magistrate and
   District Collector
   Salem District.

2. The Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.

3. The Public Prosecutor
   High Court, Madras.

4. The Superintendent, the Central Prison,
   Salem.

5. The Joint Secretary,
   Public (Law and Order) Department,
   Fort St George, Chennai 9.

VRK(CO)
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